

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

AUG 02 2019

Re: FOIA No. FY19-77  
Release Letter

**VIA ELECTRONIC AND REGULAR MAIL**

Emma Best  
MuckRock News  
DEPT MR 68295  
411A Highland Ave.  
Somerville, MA 02144-2516  
68295-06159634@requests.muckrock.com

Dear Ms. Best:

This letter responds to your correspondence received May 24, 2019, in which you requested documents pursuant to the Freedom of Information Act (FOIA) and the Federal Energy Regulatory Commission's (Commission) regulations at 18 C.F.R. § 388.112(d) (2019).<sup>1</sup> Specifically, you requested "materials relating to, describing or mentioning the release, unpublication and re-review of Enron datasets, including links on the FERC webpage, maintained by FERC and its corporate partners since their first posting."

A search of the Commission's non-public files identified internal agency emails responsive to your request, which are protected by FOIA Exemption 5.<sup>2</sup> FOIA Exemption 5 incorporates various privileges, including the deliberative process privilege, which is at issue here. Courts have consistently held that three policy purposes constitute the basis for the FOIA Exemption 5 deliberative process privilege: (1) to encourage open, frank discussions on matters of proposed policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. *See Russell v. Dep't of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982); *see also EPA v. Mink*, 410 U.S. 73, 87 (1972) (recognizing that "[i]t would be impossible to have any frank discussions of legal or policy matters in writing if all such writings were to be subjected to public scrutiny.").

The withheld documents are intra and inter-agency emails and accompanying attachments regarding the Enron Database. They include recommendations and deliberations as well as attorney-client communications. The documents are precisely the

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<sup>1</sup> 5 U.S.C. § 552, *as amended* by the FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (2016).

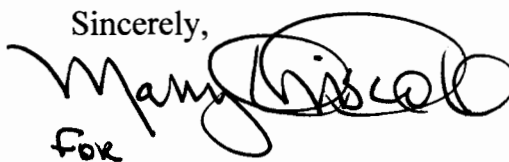
<sup>2</sup> 5 U.S.C. § 552(b)(5).

type of information FOIA Exemption 5 was created to protect. Furthermore, any factual portions of the document are so inextricably intertwined with the deliberative matter that disclosure would reveal the pre-decisional deliberations. *See In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997); *Mead Data Central, Inc. v. United States Dep't of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977) (recognizing that FOIA Exemption 5 protects all communications including purely factual material that would expose to public view an agency's decision-making process).

However, the Commission has elected to provide a discretionary release of two redacted documents which should respond to your FOIA request. The documents can be found on the enclosed disk. As provided by FOIA, any appeal from this determination must be filed within 90 days of the date of this letter. The appeal must be in writing, addressed to James P. Danly, General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and clearly marked "Freedom of Information Act Appeal." Please include a copy to Charles A. Beamon, Associate General Counsel, General and Administrative Law, at the same address.

You also have the right to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services (OGIS). Using OGIS services does not affect your right to pursue your appeal. You may contact OGIS by mail at Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at (301) 837-1996; facsimile at (301) 837-0348; or toll-free at 1-(877) 684-6448.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Tao", with a large, stylized flourish extending from the end of the signature.

For

Leonard M. Tao  
Director  
Office of External Affairs

Enclosures